CF0000061145

(2)

Division Bench (Criminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

CR.APPEAL NO. 2232 /1996.

APPELLANTS : 1. Nagendra Singh, aged about 30 years, S/o.Dhoom Narayan Singh Rajput.

2. Manbodh Singh, aged about 25 years, S/o.Dhoom Narayan Singh Rajput.

Both residents of Dukdegawan, P.S. Manjhi, Dist:Chhapra, BIHAR STATE

- versus -

RESPONDENT : State of Madhya Pradesh

17250

Filed on 12-12-96
by Shri Hemant Sen
Advocate

12-12-96
Rto. A.R.

CONVICTION U/SS:302 — R.I. FOR LIFE TO BOTH

CONVICTION 376 IPC: — R.I. FOR 10 YEARS BOTH BOTH THE SENTENCES TO RUN CONCURRENTLY.

MEMO OF APPEAL U/S.374(2) OF THE CODE OF CRIMINAL PROCEDURE:

(47)

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आदेश पत्रक

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

15-2-2006

Mr. Akhil Agrawal, counsel for the appellants.

Mr. J.D. Bajpayee, Additional Public Prosecutor with Mr. Ravindra Agrawal, Panel Lawyer for the State/respondent.

Oral judgment dictated on Dais.

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Code of Criminal Procedure, the accused/appellants have questioned legality and correctness of the judgment of conviction and order of sentence dated 28th November, 1996, passed by the Sessions Judge, Raipur, in Sessions Trial No.425/95, whereby learned Sessions Judge after holding the accused/appellants guilty for commission of offence under Section 302 & 376 of the I.P.C., sentenced each of them to undergo imprisonment for life and to undergo R.I. for ten years, respectively. It was further directed that both the sentences shall run concurrently.

Case of the prosecution is that in the night of 18th April, 1994, Bisahin Bai (PW-1) was sleeping on the roof of house along with her grand-daughters namely, Kekti, aged about 6 years (since deceased), Rekha, aged about 6 years and Mamta, aged about 3 years. At about 11 O' clock in the night, she woke up and saw that Rekha & Mamta were sleeping with her whereas Kekti was missing. Therefore, she enquired from her daughter-in-law Girja Bai on which she replied that Kekti had not come to their room. Search was made,

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आदेश पत्रक (पूर्वानुबद्ध)

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but Kekti could be traced out. After informing Nagendra Singh & Manbodh Singh (accused/appellants herein), the missing girl was searched along with them, but the whereabouts of Kekti could not be known. Nagendra Singh & Manbodh Singh also left the house and they have not returned. Missing report to that effect was lodged by Bisahin Bai (PW-1) on 19-4-1994 at about 11.10 a.m. on which missing report No.21/94 was entered at serial No.1241 in the Roj Namcha (daily dairy). Till 20th April, 1994, when the accused persons did not return, and it was noticed that smell was emanating from the room where the accused persons used to reside as tenants, the matter was reported to the Police on which Tahsin Saeed Khwaja (PW-16), Station House Officer, Police Station: Aamanaka, reached to the spot and lock of the room of the accused persons was break open. On search of the room, dead body of Kekti was found in a gunny bag.

Merg intimation (Ex.P-18) was prepared and thereafter, Tahsin Saeed Khwaja (PW-16) prepared Dehati Nalishi (Ex.P-20). Based on merg intimation and Dehati Nalishi, F.I.R. (Ex.P-21) was registered in Police Station: Aamanaka on 20th April, 1994 at 3.05 p.m. After giving notice (Ex.P-6) to the Panchas, Panchnama (Ex.P-7) of the body of Kekti was prepared. The gunny bag was taken into possession under Ex.P-8. Blood stained grit and plain grit were taken into possession from the place of occurrence under Ex.P-9. Site plan (Ex.P-10) of the place of occurrence was prepared. Body of Kekti was sent for post-mortem examination to D.K. Hospital, Raipur, where Dr. D.C. Jain (PW-6) conducted post-mortem on the body of Kekti and prepared the post-mortem report (Ex.P-11). The accused persons were sent to D.K. Hospital, Raipur for their test about potency under Exs.P-12 & P-14. Site plan (Ex.P-16) was also got prepared by the Patwari. The attendance register of

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accused Nagendra Singh was taken into possession under Ex.P-1. Blood stained articles and other articles were sent for examination to Forensic Science Laboratory, Raipur for serology test. Serologist report (Ex.P-24) was received and gunny bag, Pajama & T-shirt of Kekti were found stained with human blood. T-shirt of Kekti was found stained with 'A' group blood.

After completion of investigation, charge sheet was filed in the Court of Additional Chief Judicial Magistrate, Raipur, against Nagendra Singh & Manbodh Singh (appellants herein) for commission of offence under Sections 302 & 376 of the I.P.C. and under Section 212 of the I.P.C. against co-accused Surendra Singh & Prahlad Singh. Learned Additional C.J.M. Raipur committed the case to learned Sessions Judge, Raipur for trial. Above charges were framed by learned Sessions Judge, however they abjured the charges.

The prosecution in order to establish charges against the accused persons examined 16 witnesses. On the other hand, statements of accused persons were recorded under Section 313 of the Cr.P.C. in which the accused persons denied the material evidence appearing against them and stated that they are innocent and they have been falsely implicated in the crime. Accused/appellant No.1 Nagendra Singh has stated that he participated in the search of Kekti and when people started beating, he ran way. In reply to question No.2, both the accused/appellants have admitted that they were residing on rent in the room in the question.

Learned Sessions Judge after hearing the arguments of Public Prosecutor and counsel for the accused persons convicted and sentenced the accused/appellants as mentioned in para 1 of this judgment. However, the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

other co-accused persons namely, Surendra Singh & Prahlad Singh were acquitted of the charge of Section 212 of the I.P.C.

We have heard Mr. Akhil Agrawal, learned counsel for the appellants and Mr. J.D. Bajpayee, learned Additional Public Prosecutor with Mr. Ravindra Agrawal, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Kekti and commission of rape on her are not in dispute. Even otherwise, Dr. D.C. Jain (PW-6) who conducted post-mortem on the body of Kekti has stated in his evidence that on 20th April, 1994 he conducted post-mortem on the body of Kekti and found that muscle of labia majora & labia minora were found ruptured and there was clotted blood all-around vagina, but the hymen was intact. He has further stated that there were contusions on left side of the neck in the size of 2½" x 3" and on right side of the neck in the size of 1" x ½ " and there was swelling on the vocal cord. Signs of finger were present on the neck and hyoid bone was found fractured. In his opinion, signs of forceful intercourse were present on private parts of the deceased and she died on account of asphyxia due to throttling. Blood stained clothes of the deceased were taken into possession and sealed. The cause of death was asphyxia and same was homicidal in nature.

Therefore, in view of the above evidence of Dr. D.C. Jain (PW-6) it is established that the death of Kekti was homicidal in nature and rape was committed on her before the death.

Now, coming to the question of involvement of the accused/appellants in the crime in question, there is no direct evidence in this case. The case rests on the circumstantial evidence. In order to rest conviction based on the

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circumstantial evidence, as per the settled law, before the Court can record conviction, it must satisfy itself that circumstances from which an inference of guilt could be drawn have been established by unimpeachable evidence led by the prosecution and that all the circumstances put together are not only of a conclusive nature but also complete the chain so fully as to unerringly point to the guilt of accused and are not capable of any explanation which is not consistent with the hypothesis of the guilt of the accused.

The prosecution has tried to prove charges against the accused/ appellants on the following circumstances: -

1. that, the dead body of Kekti was found on 20th April, 1994 in a room where the accused/appellants used to reside as tenants; and
2. that, accused/appellants Nagendra Singh & Manbodh Singh were absconding since the night of the crime in question i.e. 18th April, 1994.

Now, we shall proceed to scrutinize and examine the evidence available on record produced by the prosecution, in order to esfablish charges against the accused/appellants so as to see that whether the prosecution has been able to establish charges based on the circumstantial evidence and whether the circumstantial evidence has stood up to the test laid down by the Apex Court.

First circumstance: -

As far as this circumstance is concerned, as per the evidence of Bisahin Bai (PW-1), in the fateful night i.e. on 18-4-1994 Bisahin Bai along with Kekti (since deceased), Mamta & Rekha was sleeping on the roof of the house, at about 11-12 O' clock in the night when she woke up, she found that Kekti was missing, therefore, a search made, even people from the vicinity

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also participated in the search and even the accused persons also initially participated in the search, but whereabouts of Kekti could not be known. On 20th April, 1994, when people started feeling that foul smell was emanating from the room of the accused persons, an intimation was sent to Police Station: Aamanaka on which Tahsin Saeed Khwaja (PW-16), In-charge Station House Officer, receiving this intimation reached to the room of the accused persons. After breaking lock, the door was opened and body of Kekti was located in a gunny bag, based on that, merg intimation (Ex.P-18) was prepared and Dehati Nalishi (Ex.P-20) was prepared by Tahsin Saeed Khwaja (PW-16) at about 11.05 a.m.

Manglu (PW-2), landlord, has stated in his evidence that Nagendra Singh & Manbodh Singh used to reside in his house as tenants. He has further stated that the matter was reported to the Police, next day, room of the accused persons was break open and the body of Kekti was found in a gunny bag under the cot. In cross-examination, he has stated that the room was locked which was break open by the Police and after that Budhiarin Bai took out the gunny bag which was lying under the cot and same was brought in the Verandah (Parchi).

Tilakraj (PW-5) has stated in his evidence that on third day from the date of incident a foul smell like dead body of a man was coming out from the room, the Police opened the door of that room after breaking the lock and one gunny bag was found under the cot in which body of Kekti was found. Search Panchnama (Ex.P-5) was prepared which bears his signature from 'A' to 'A' place and Police intimation (Ex.P-6) also bears his signature from 'A' to 'A' place. Inspection of the body was made in the presence of people and

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Panchanama (Ex.P-7) was prepared. There were abrasions on the face of the body of Kekti, there were tears on private part and blood was oozing out of it. In cross-examination, this witness has stated that the dead body was taken out of the gunny bag by Bhanwar Singh & Budhiarin Bai on being asked by Inspector Tiwari.

Johanramdin (PW-12), who was the resident of same locality, has stated in his evidence that in the fateful night he came to know that Kekti was missing, they were searching Kekti and the accused persons were also with them, but in between that, they absconded. On third day, foul smell started emanating from the room where the accused persons were residing, Constable Chandulal was present, thereafter, Police came, lock of the room was break open and there was gunny bag under the cot in which body of Kekti was found and the search memo (Ex.P-5) was prepared, but the accused persons were not there. After issuing notice (Ex.P-6), Panchnama (Ex.P-7) of the dead body was prepared. Same is the evidence of Bitthal Yadav (PW-13) who has corroborated the evidence of Johanramdin (PW-12) & Tahsin Saeed Khwaja (PW-16).

In cross-examination of Manglu (PW-2), Tilakraj (PW-5), Johanramdin (PW-12) and Tahsin Saeed Khwaja (PW-16), counsel for the defence has not been able to elicit any circumstance, which makes the evidence of above witnesses regarding the recovery of dead body of Kekti from the room of accused persons, in any way doubtful.

Therefore, from the above evidence, it is established that the dead body of Kekti was found in a gunny bag where the accused persons were residing and even in their statements under Section 313 of the Cr.P.C., each of the

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accused has admitted that they were residing in the room in question where the dead body was found.

Second circumstance: -

As far as this circumstance is concerned, Johanramdin (PW-12) has stated that when he came to know about missing of Kekti, people started searching and even accused/appellants Nagendra Singh & Manbodh Singh also started searching, but when they were searching, during that time, accused/appellants Nagendra Singh & Manbodh Singh disappeared. In cross-examination para 7 he has again stated that in the fateful night they had not gone to the room of the accused persons, the accused persons were also with them searching the girl and all of a sudden they disappeared, where they had gone, it was not known to them. On the next day morning, they were found missing from their room, thereafter, the day when the foul smell started emanating from the room of the accused persons, Manglu Yadav, Bhanwar Singh, Tilakraj and he along with Narottam, Malkam, Jaitu, Sukhram etc. were present, Police were informed, first of all Chandulal, Head Constable came, thereafter, Sub Inspector Tiwari & T.I. Khwaja came and the lock was broke open.

Bitthal Yadav (PW-13), father of the unfortunate deceased girl, has stated in his evidence that he was working as truck helper, when he came to know about the incident he returned on the next day at 3 p.m., his mother informed about missing of his daughter, he also came to know that accused/appellants Nagendra Singh & Manbodh Singh were also absconding, their room in which they were residing was locked and the body of Kekti was found in one corner of the room in gunny bag.

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The accused/appellants were arrested on 25-3-1995 i.e. after 11 months from the date of incident. This fact has not been disputed even by the accused persons. Appellant No.1 Nagendra Singh has stated in his statement under Section 313 of the Cr.P.C that the locality people started beating, therefore, out of fear they ran away. Therefore, abscondence of these accused persons is also not in dispute.

Now, it has to be seen that whether based on the above two circumstances, the prosecution has been able to connect the accused persons with the crime in question i.e. offence under Sections 302 & 376 of the I.P.C.

Mr. Akhil Agrawal, learned counsel for the appellants, argued that as far as absconding of the accused persons is concerned, as people of the vicinity were about to beat the accused persons, out of fear they ran away, therefore, that cannot be considered as abscondence.

But, we are not convinced by the argument of learned counsel for the reason that even though there is no legal evidence on record and nothing has come in cross-examination of independent witnesses that any attempt was made to assault the accused persons, Johanramdin (PW-12) in cross-examination in para 13 has stated that in the locality there was no tension like situation and Bisahin Bai has not suspected any one. However, Tilakraj (PW-5) in cross-examination has stated that there was tension like situation, people became angry and they were about to beat Nagendra Singh & Manbodh Singh and the accused persons ran away. Even assuming that there was any situation like beating the accused persons and they left the place, they were not supposed to remain absconding forever. In all probability, they ought to have approached the Police Station. But, no such attempt was made by the

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accused persons and only on 20th April, 1994, when foul smell started emanating from the room of accused persons, a search was made in their room and the dead body was found. Thereafter, search of the accused persons was made and they were arrested on 25-3-1995. Till then, for 11 months they remain absconding. Therefore, conduct of the accused persons after commission of crime becomes relevant as per the provisions of Section 8 of the Indian Evidence Act, 1872, which envisages that "*any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact. The conduct of any person an offence against whom is the subject of any proceeding, is relevant, if such conduct influences or is influenced by any fact in issue or relevant fact and whether it was previous or subsequent thereto*".

Dead body of the deceased was found in the room of the accused persons and whatsoever explanation has not been coming out from the accused side that as to how the body was found in their room. Therefore, from abscondence of the accused persons from the place of occurrence and that the body of the deceased was found in a gunny bag in the room of the accused persons, the only irresistible inference which can be drawn is that the accused persons were authors of the crime in question. There is nothing on record or on cross-examination of the witnesses that anybody else had any chance to place the body of Kekti in the room where the accused persons were residing.

In cross-examination of Bisahin Bai (PW-1) it has come in para 6 that when she woke up accused Manbodh Singh was sleeping on the roof, whereas accused Nagendra Singh was not present there and she had not

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gone to the room of Nagendra Singh to find out his whereabouts. She has further stated in examination-in-chief that accused Manbodh Singh was sleeping on the roof and when she went to the house of her son-in-law, accused Nagendra Singh, younger brother of Manbodh Singh, met her and said that let us go to the house of Seth for searching, at that time, Manbodh Singh was sleeping and accused Nagendra Singh was not present. But, from the above evidence, it is difficult to reach to the conclusion that accused Manbodh Singh was not party to the crime in question as he was sleeping. As dead body of the deceased was found in the room of accused persons and they absconded till they were arrested after eleven months, in the circumstances, possibility cannot be ruled out that after committing the crime Manbodh Singh might have come back and slept to show that as if he was not aware of the crime.

Therefore, circumstantial evidence and conduct of the accused/ appellants after committing the crime establish that the accused/appellants were authors of the crime in question and circumstantial evidence & conduct unerringly point towards involvement of the accused/appellants in the crime in question. In the circumstances, we do not find any reason to interfere with the finding of the trial Court convicting the accused/appellants under Section 302 & 376 of the I.P.C., as the same is based on cogent, legal and clinching evidence.

In the result, the appeal of the appellants fails and the same is hereby dismissed.

Consequently, I.A.Nos.739/2004 & 2992/2005 stand disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge